

REMARKS

Claims 1 and 6 are amended in this application, claim 5 is canceled and new claims 9, 10 and 11 are added.

New claim 9 is dependent on claim 1 and makes reference to the method being for adjusting the threshold value of the receiver. This feature was originally included in claim 2 (now canceled) and was incorporated in claim 1 in the previous amendment. In this amendment, this feature is deleted from claim 1.

New claim 10 is based on original claim 7, re-written in independent form and including the limitations of original claim 6. The opportunity has been taken to incorporate the clarifying amendments made to claim 6 to meet the rejection under 35 U.S.C. §112.

New claim 11 is based on original claim 8, re-written in independent form and including the limitations of original claim 6. The opportunity has been taken to incorporate the clarifying amendments made to claim 6 to meet the rejection under 35 U.S.C. §112.

Claim Objections

Claim 6 has been amended to provide a long equivalent text term for "... means (SR) for passing the digital data stream..."

Claim Rejections under 35 USC §112

Claims 1 and 6 have been amended to re-cast them in a more appropriate form to more clearly show the association of the components and method steps. Claim 5 is canceled, making the rejection against it moot.

Claim Rejections under 35 USC §103

Claims 1 and 4 have a Paris Convention priority date of 12th February 2001, which is before the date(s) of Wang. Accordingly, it is submitted that Wang does not constitute prior art citable against claims 1 and 4. It follows that the 35 USC 103(a) rejection based on Wang and IEEE reference and further in view of Way et al (US Patent No. 6,583,903) must fall away.

Although the combination of references cited against Claims 5 and 6 were not applied to claim 1 in the previous Office Action, it should be noted that the arguments presented below in respect of the patentability of claim 6 are also applicable to claim 1.

Claim 3 is patentable, not least on the basis that it depends upon an allowable amended claim 1 and that the Examiner has indicated that it would be allowable if rewritten to include all of the limitations of the base claim.

Claim 5 has been canceled.

Claim 6 has been amended to more clearly define the present invention and now specifies taking into consideration the history of occurring bits preceding the actual sampled bit. It also includes reference to a circuit in the kind of a look up table.

Way discloses using the bit error rate to control polarization of an optical signal transmitted from a remote location. The bit error rate signal is applied to a detector setpoint controller, which provides a control signal to an adjustable stored threshold level, via line 1135 of Figure 10 (see Col 13, paragraph beginning line 52). However, Way is silent concerning the generation of this control signal. There is no disclosure or suggestion that the history of previously occurring bits preceding an actual sampled bit might be taken into consideration when making any adjustment. Neither is such a suggestion or disclosure forthcoming from Wedding or Tan. It follows that there is no combination of these references that would lead a skilled person to arrive at the present invention as claimed in claim 6. Thus for this reason, it is submitted that claim 6 is patentable.

Claims 7 and 8 are dependent on claim 6, and, as it is believed that this is allowable, these are also allowable for at least that reason.

New claim 9 is dependent on claim 1, which is believed to be allowable, and is allowable for this reason at least.

New claims 10 and 11 include matter from original claims 7 and 8 respectively combined with original claim 6 and clarifying amendments made in this amendment). As these were previously indicated by the Examiner to include allowable subject matter, it is believed that claims 10 and 11 are patentable.

Reconsideration of this application is respectfully requested. In view of the foregoing, allowance of all the claims presently in the application is respectfully requested, as is passage to issuance of the application. If the Examiner should feel that the application is not yet in a condition for allowance and that a telephone interview would be useful, he is invited to contact Applicant's undersigned attorney at 973 386 3147.

Respectfully submitted,

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